

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN EXAMINATION BY THE PUBLIC SERVICE)	
COMMISSION OF THE APPLICATION OF THE)	
FUEL ADJUSTMENT CLAUSE OF KENTUCKY)	CASE NO. 92-493
UTILITIES COMPANY FROM NOVEMBER 1,)	
1990 TO OCTOBER 31, 1992)	

O R D E R

Kentucky Industrial Utility Customers ("KIUC") and the Attorney General ("AG") have applied for rehearing to consider the issue of "inclusion of interest on the sale and lease amounts to be refunded to ratepayers." Having considered the applications and all responsive pleadings thereto, we deny.

On January 2, 1997, the Commission ordered Kentucky Utilities Company ("KU") to reduce its actual monthly fuel cost by \$3,511,987 in its next monthly fuel adjustment clause filing to reflect the net revenues earned from the rental and sale of certain railcars. The Commission found that a direct causal relationship existed between KU's agreement to terminate its coal supply contract with Coal Ridge Fuels, Inc. ("Buyout Agreement") and the railcars' rental and held that the rental proceeds were, therefore, a benefit derived from the Buyout Agreement and should be used to offset some of the Buyout Agreement costs. The Commission further found that, as the Buyout Agreement directly benefitted KU's sale of the railcars and as the ratepayers directly paid for the railcars' depreciation expense through the fuel adjustment clause, the ratepayers should enjoy any gain from that sale.

In their applications for rehearing, the AG and KIUC argue that KU should be required to pay interest on the rental and net sales proceeds from the time KU acquired each. Unless interest is included in the refunded amount, KIUC argues, KU will "retain a benefit as a result of overcharging for fuel costs." KIUC Application at 2. KIUC further argues that interest is especially appropriate in this case because: (1) KU has had use of the funds for between 6 to 8 years; (2) KU failed to disclose the railcar lease and sale and then engaged in delaying tactics; and (3) KU has been on notice since November 1, 1990 that the amounts in question were subject to refund.

The Commission notes at the outset that no refund of monies was required by its January 2, 1997 Order. We instead ordered KU, when calculating its next monthly fuel charge, to reduce its actual fuel cost by \$3,511,987. This action fully comports with Administrative Regulation 807 KAR 5:056, Section 1(11), which authorizes the Commission to "order a utility to charge off and amortize, by means of a temporary decrease of rates, any adjustments it finds unjustified due to improper calculation or application of the charge or improper fuel procurement practices." That regulation, which governs the operation of all fuel adjustment clauses, makes no reference to refunds or interest.

Assuming arguendo that the Commission has the authority to include an interest component when ordering a temporary reduction of rates, the Commission finds the inclusion of such component is inappropriate in this case. The record shows no misconduct on KU's part. When the Commission considered the Buyout Agreement in 1988,¹ the

¹ Case No. 10214, Application of Kentucky Utilities Company for an Order Approving Certain Accounting Treatment of Amounts Paid for Coal Contract Release.

Agreement's potential effect on KU's assets was not considered.² The Commission imposed no reporting requirements on KU with regard to any of its assets. No administrative regulation or Kentucky statute requires any report to the Commission on the railcars' lease and sale.

KU's retention of the rental and sale proceeds was neither illegal nor unreasonable. In accounting for the proceeds, it followed accepted accounting practices. While KU's position was ultimately found to erroneous, it was based upon a reasonable interpretation of existing law and was taken in good faith.

We find no delaying tactics upon KU's part. These proceedings extended over a lengthy period due to the Commission's preference to wait until completion of the Federal Energy Regulatory Commission ("FERC") proceedings³ on the same issue. This approach allowed the Commission the benefit of reviewing all evidence and argument presented to FERC.⁴

The record also fails to support the contention that KU has on notice that the overcharges were "subject to refund." In its Order of May 13, 1993 in this proceeding, the Commission expressly held that the charges in question were not subject to refund and the crediting mechanisms expressly established in Administrative Regulation 807 KAR 5:056 would be employed if any overcharges were found.

² Both the Attorney General and KIUC were parties to Case No. 10214. Neither objected to KU's proposal nor raised the issue of reporting requirements.

³ Kentucky Utilities Co., FERC Docket No. FA91-65-000.

⁴ See Order of May 13, 1993 at 5.

Accordingly, the Commission HEREBY ORDERS that the AG's and KIUC's applications for rehearing of the Order of January 2, 1997 are denied.

Done at Frankfort, Kentucky, this 13th day of February, 1997.

PUBLIC SERVICE COMMISSION

Linda K. Breathitt
Chairman

Edna J. Helton
Vice Chairman

B. J. Helton
Commissioner

ATTEST:

Don Mills
Executive Director